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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,418	04/29/2005	Thorvaldur Tryggvason	3535-0140PUS1	4166
2292	7590	04/06/2006	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			GIBSON, RANDY W	
			ART UNIT	PAPER NUMBER
			2841	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/533,418	TRYGGVASON, THORVALDUR	
	<b>Examiner</b>	<b>Art Unit</b>	
	Randy W. Gibson	2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/29/05&amp;10/25/05</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 8-10 are objected to because of the following informalities: the use of the term "such as" (claim 8) and "or similar" (claim 9) renders the claim indefinite since it is unclear if additional elements which are not listed might also be included. In claim 10, it appears that "bar cod" is misspelled. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 6-10, and 12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mezey (US # 5,230,393) in view of Eriksson et al (US # 5,994,650). Mezey discloses a refuse collecting device

including a frame member (Col. 3, lines 35-42), a lifting (22) & gripping mechanism (35), a detecting means (30) for reading information (Col. 4, ln.s 3-9), a mechanism (32) for measuring a characteristic property of the bin (Col. 4, ln.s 9-17), and a control unit (21, 280). With respect to claims 3 & 6, the "characteristic property" being measures is weight. With respect to claims 8 & 9, the detecting reading means reads an IC chip or a barcode (Col. 3, ln. 65 to col. 4, ln. 2). With respect to claim 12, the controller is a computer.

It is unclear if the functional recitation at the end of claim 1 (and claim 7), namely that the lifting mechanism is either activated or not based on whether the measured "characteristic property" matches predetermined criteria, carries any patentable weight or not, since it appears to be merely an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the recited structure is capable of performing the recited task. See *MPEP* § 2114.

If this functional statement is determined to define patentable structure, it is noted that Mezey does not expressly state that the lifting mechanism is either activated or not based on whether the measured "characteristic property"(I.E.: weight) matches predetermined criteria. However, it is known to program a lift to avoid lifting an object which would overload the system, as shown by the example of Eriksson et al (Abs.). It

would have been obvious to the ordinary practitioner to program the device of Mezey to refuse to lift a garbage container that too heavy to avoid damage to the lift.

As for the limitation in claim 10 that overload information is written on the RF tag, Mezey does not expressly state that the RF tag disclosed stores overload information. However, it does not appear that the content of the information stored on the RF tag imparts any structural difference between the claimed RF tag and the RF tag of Mezey, therefore this limitation is not deemed to carry any patentable weight. See *MPEP* § 2112.01(III).

5. Claims 4, 5, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mezey (US # 5,230,393) in view of Eriksson et al (US # 5,994,650). Mezey discloses the claimed invention except for the technique of measuring weight by measuring the current applied to the electric lifting motor (claims 4 & 5), or the provision of an overload alarm (11).

Mezey measures weight by using mechanical load cells. However, he states that any other suitable means for measuring weight might be used (Col. 6, lines 58-60). Eriksson et al disclose that it is known to measure the weight lifted by detecting the current drawn by the lifting motor (Abs.). Eriksson et al also disclose that it is known to provide an overload alarm that is activated by such a weight measurement (Abs.). It would have been obvious to substitute the weighing arrangement of Eriksson for the load cells of Mezey motivated by their art recognized functional equivalence. See *MPEP*

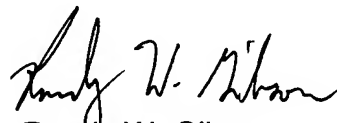
§ 2144.06. It would also have been obvious to the ordinary practitioner to include an overload alarm in the device of Mezey for protect the lift from damage.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Randy W. Gibson  
Primary Examiner  
Art Unit 2841